

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

Docket No. 10-739M-11

vs.

DANIEL CHOI,

Defendant,

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MOTION TO COMPEL PRODUCTION

Comes now the Defendant, Daniel Choi, and files this motion to compel production of certain documents, pursuant to the Federal Rules of Criminal Procedure, 16 and 17, and as grounds therefore would show:

1. That trial in the above styled cause commenced on August 29, 2011;
2. That prior to trial the US filed a motion to strike selective prosecution as a prospective defense;
3. That the Defendant in this case has not only been articulating his first amendment rights to protest the unconstitutional policies of the US military's 'Don't Ask, Don't Tell' provisions, it has asserted that the government may have acted vindictively and with animus towards the above named Defendant;
4. That to prove a claim of selective prosecution the Defendant is prepared to show that other protestors on the White House sidewalk, similarly situated, have been disparately treated;
5. That this issue has been raised by the US in its direct examination of witnesses, such as US Park Police officer Robert La Chance.
6. More specifically, at page 49 of the official court transcript of the trial record, commencing at Line 19, Lt. La Chance is asked by the US, Ms. George, whether or not he received "any information from any other law enforcement agencies about the demonstrtrations on November 15, 2010."
7. At Line 22, La Chance responds in the affirmative, then indicating that he "received an email from the US Secret Service." and that further, upon inquiry from the court at page 50, line 17, whether there were discussions by said agencies about what was going to happen that day.
8. At Line 21, the La Chance replies 'Yes,' indicating further in pages 50-52, even upon the Court's own questioning that a briefing occurred, the contents and import of which may be in fact memorialized in said e mails from the Secret Service.
9. The Defendant has sent a letter asking the US to produce this email and any others which may be probative of the defendant's theory of this case, to wit, that he may have been selectively targeted due to bad faith, ill will of government agents extending from the arresting officers of the US Park Police to the Secret Service to representatives of the President of the United States.
10. The US has not voluntarily agreed to provide this email prior to the return of La Chance to the stand on the morning of August 31, 2011.
11. The Defendant submits this and corresponding or related emails should be made available to it as the US opened the door for the same in its direct examination of its key witness.
12. Further, the US is so concerned about the Defendant raising this defense it had, on the eve of trial, filed its own Motion in Limine to bar a defense of Selective Prosecution, based on a

purported failure of the Defense to raise it pre trial.

13. Now, as a result of the government's acts in prosecuting this case, they have opened the door to raising this motion, and further the defendant, in support thereof, will show, based on the evidence adduced in the trial so far, that the government is duty bound to produce this material.
14. Further, this material is arguably Jenks material, requested by defense counsel Anne Wilcox, prior to the start of this trial, on May 2, 2011, asking for "all police documents, reports and notes" used in this investigation.
15. As a consequence of the failure to produce the same, the US attorney may have been non compliant in producing critical Brady material, arguably necessitating a hearing to determine whether the plaintiff's conduct was inad vertent or inexcusable, violating Brady vs. US.
16. Accordingly, today the Defendant issued subpoenas to the Department of Interior and the Secret Service, under the aegis of Homeland Security, and the undersigned hereby requests that this court enter an order compelling said parties to appear and submit "all documents, electronically stored information, and objects pertaining to Dan Choi, and any and all such notes leading up to and including his November 15, 2010 arrest in front of the White House, providing any material, memoranda, notes, emails, related to Daniel Choi being prosecuted therefrom, including the decision to do so in federal court, and any surveillance, and intelligence, or any briefing materials evolving out of the same criminal activity which is the subject of this prosecution.
17. Finally, as the Defendant has put forth the argument that his conduct in the above styled cause was first, a political necessity, and second, in order to further assert his argument that his goal of engaging in expressive, non violent, first amendment protest was being thwarted and tainted by the Plaintiff even before its inception.
18. Other grounds and caselaw to be argued ore tenus.

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I hereby certify that the foregoing motion has been electronically delivered to the US attorney trying this case, Angela George, this 30<sup>th</sup> day of August, 2011.